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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/585,134 | 06/01/2000 | Stephen H. Albertson | TRACKER.001C1 | 4568 |

20995 7590 07/27/2005

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| EXAMINER |
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MITCHELL, KATHERINE W

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| ART UNIT | PAPER NUMBER |
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3677

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--|---|--|
| Office Action Summary | Application No. 09/585,134 | Applicant(s) ALBERTSON ET AL. | |
| | Examiner Katherine W. Mitchell | Art Unit 3677 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 17-19 and 46-54 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 14, 17-19 and 46-54 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/26/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. Applicant has added to sheets of drawings in response to a drawing objection that certain fasteners were not shown. Examiner agrees that one of ordinary skill in the art would immediately recognize such fasteners, and does not believe any new matter has been introduced in merely showing well-known fasteners in phantom joints; thus the drawings are approved.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 14, 17-19, and 46-50, 52, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson USP 5511917 in view of Campbell USP 4894963.

Dickson teaches a joint (Fig 3) comprising 1st and 2nd surfaces (horizontal and vertical boards, unlabeled). Dickson further teaches a fastener securing the first and 2nd surfaces together, said fastener having an exposed identifying indicia portion, said indicia preselected to define at least two fastener physical properties (length and gauge, Dickson col 5 lines 1-10 and 23-30), on the exposed portion. Dickson teaches in col 1 lines 60-67 that graphic indicia on the head of a fastener allow building inspectors to tell quickly if a fastener meets the building code requirements by just looking at the fastener head, thus inevitably the surfaces are at least capable of being subject to regulations

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requiring specific physical properties for fasteners used to join said surfaces. Col 5 lines 25-40 teach that the indicia may be a color, and col 1 lines 39-41 also teach that it is well-known to preselect a color to correlate to a physical property, such as diameter, of a fastener.

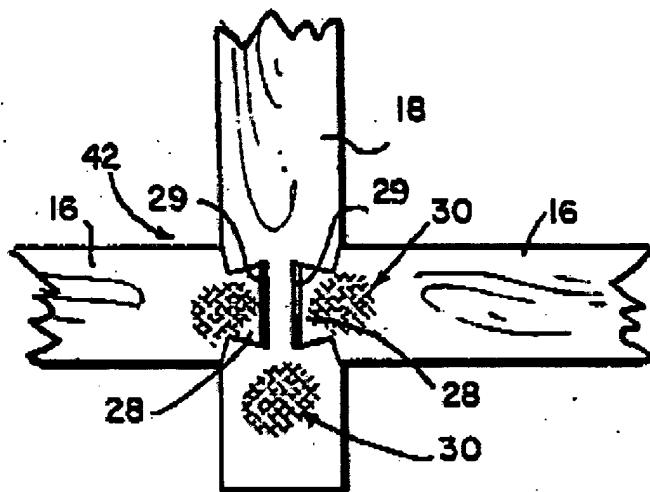
Although Dickson is not explicit that a key is provided, for the device to work, inherently a key is provided. Dickson is clear that inspectors must know what the markings / colors represent, as do the installers, and thus some correlating key is inevitably provided or else there would be no consistent correlation. The key would inevitably correlated whatever indicia is used to the corresponding physical property.

As discussed above, Dickson has been shown to teach all the elements except that the color of the exposed portion is visible by a person of normal vision from a specific distance away, including 10 feet. Dickson teaches in col 1 lines 60-67 that graphic indicia on the head of a fastener allow building inspectors to tell quickly if a fastener meets the building code requirements by just looking at the fastener head, but does not specify a distance.

Campbell teaches a building kit, with the interconnecting parts 16/18 both color coded so that they can be correctly matched. Referring to the parts, "18" can be considered the fastener and "16" and "16" considered the connectors preselected to use with a specific fastener. Examiner notes that she is not physically combining the two references, only using Campbell to teach that fasteners and connectors can be color coded to match so that the proper fastener is used with a corresponding connector. The fastener remains the Dickson fastener (nail). Clearly, the color indications "30" of

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Campbell are visible from a distance of at least 10 feet by a person with normal vision, as the colors are applied at the ends of structural members clearly larger than the head of a nail, no matter how large the nail, as shown in Fig 2 below.

**FIG 2**

Therefore, it would have been obvious to one of ordinary skill in the art, having the teachings of Dickson and Campbell before him at the time the invention was made, to modify Dickson as taught by Campbell to include coloring the tops of the fasteners to be highly visible, in order to obtain identification "at a glance". One would have been motivated to make such a combination because easily identifiable markings leading to faster and more accurate use of fasteners would have been obtained, Dickson teaches that it is important for the building inspector to identify the proper fastener "at a glance".

Re claims 17-19: using symbols, letters, or numbers to identify physical properties is taught in Dickson col 4 lines 30-36:

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It will be appreciated by those skilled in the art that length indicators can comprise almost any mark, shape or character. For example, as shown in FIGS. 2a-2c, the presently preferred length indicators are hatch or tic marks; however, the length indicators could also be, but are not limited to, letters, numbers, or other geometrical shapes.

Re claims 46-48: Dickson discloses that painting the head of the fastener is known, and it is the painted head that allows such visibility, thus the distances are inevitably taught.

Also, examiner notes that since the colored top is the property allowing applicant's fastener to be recognizable at least 10, 15, 18 and/or 20 feet, any colored top would inevitably be recognizable by a person of normal vision from a distance of at least 10, 15, 18 and/or 20 feet when the shaft is inserted into a surface since it meets the same physical structure.

Re claims 49,50,52,53: Dickson teaches nails, screws, rivets, and bolts as the fasteners in col 1 lines 8-11.

4. Claims 51, 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson USP 5511917 in view of Campbell USP 4894963 and common knowledge in the art.

Re claims 51, 54: As discussed above, Dickson in view of Campbell teach all the elements except specific fastener types. Examiner takes Official Notice that staples and wedge anchor bolts are equivalent fasteners well-known by one of ordinary skill in the art. It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have used any such fastener, since the examiner takes Official Notice of the equivalence of staples, nails, screws, rivets, and bolts including

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wedge anchor bolts for their use in the fastener art and the selection of any of these known equivalents to use in building and need property identification would be within the level of ordinary skill in the art.

Response to Arguments

1. Applicant's arguments with respect to all pending claims have been considered but are moot in view of the new ground(s) of rejection.
2. Examiner notes that additional structure for the connector, such as a Markush listing of the connectors, may help distinguish over the prior art.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
5. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

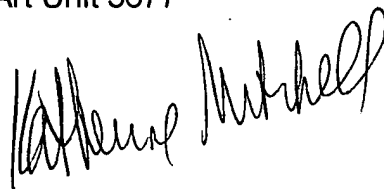
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W. Mitchell whose telephone number is 571-272-7069. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Katherine W Mitchell
Examiner
Art Unit 3677

Kwm
7/24/2005

A handwritten signature in black ink, appearing to read "Katherine W. Mitchell", written in a cursive style.

CATEGORIZING FASTENERS AND CONSTRUCTION...

Stephen Albertson et al.

Appl. No.:09/585,134 Atty. Docket:TRACKER.001C1

12/12

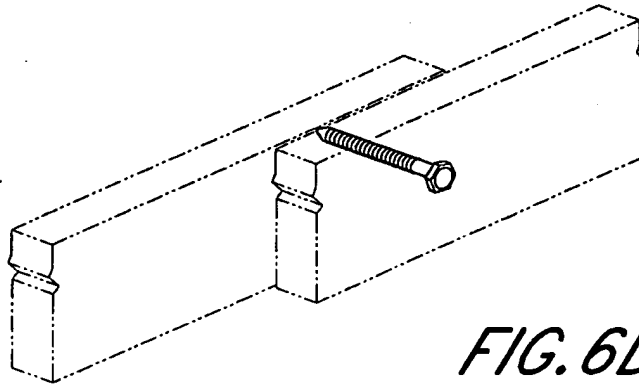


FIG. 6D

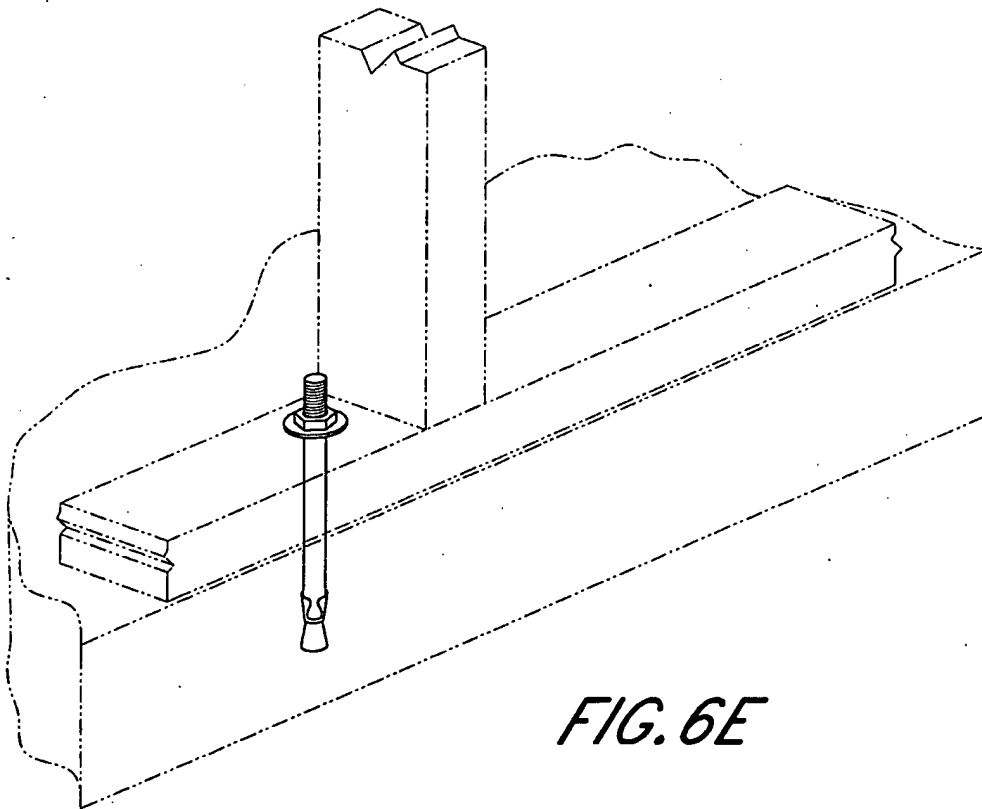


FIG. 6E

CATEGORIZING FASTENERS AND CONSTRUCTION...

Stephen Albertson et al.

Appl. No.:09/585,134 Atty. Docket:TRACKER.001C1

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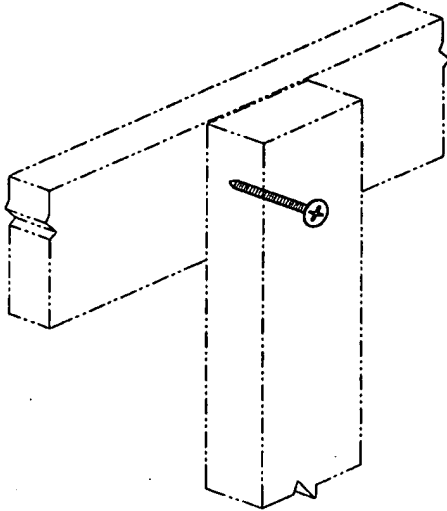


FIG. 6A

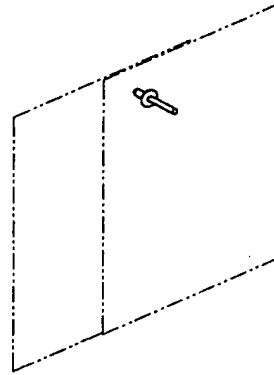


FIG. 6B

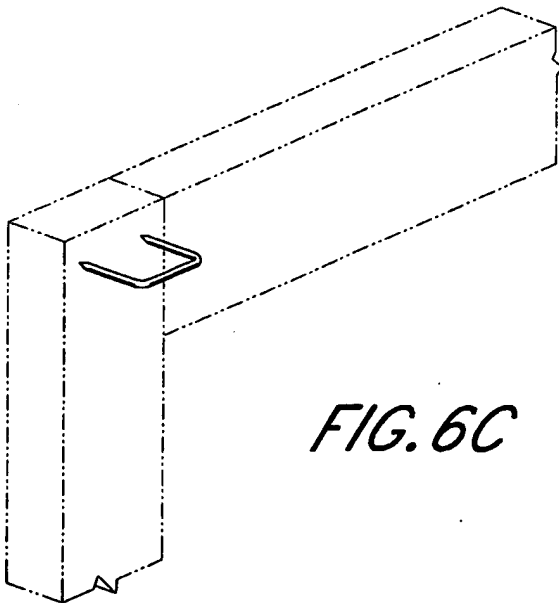


FIG. 6C